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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D C 20548

CIVIL DIVISION

JUN 9 1969

Dear Mr. Johnson:

As part of a survey of Customs control over petroleum products in bonded storage, we obtained information concerning the duty-free withdrawal of bonded jet fuel for use in certain American-flag aircraft purportedly engaged in foreign trade within the meaning of section 309(a)(1)(C) of the Tariff Act of 1930, as amended (19 U.S.C. 1309). The purpose of this letter is to obtain your views and comments on the interpretation and administration of the provisions of section 309.

Section 309(a)(1)(C) of the Tariff Act of 1930, as amended, provides generally that articles of foreign origin may be withdrawn from Customs custody free of duty for use as supplies on aircraft registered in the United States and actually engaged in foreign trade.

Treasury Decision 66-99(1), dated May 6, 1966, states that -

"American-flag aircraft are engaged in the carriage of passengers and cargo for hire on regularly scheduled flights between Los Angeles, California, and a foreign country or countries, in both directions. Some of the flights proceed to foreign destinations via the polar route with an intermediate stop at San Francisco, California, where more passengers and/or cargo may be laden. Other flights depart Los Angeles eastbound to foreign destinations with intermediate stops en route, such as at Chicago, Illinois, Detroit, Michigan, Philadelphia, Pennsylvania, New York, New York, and Boston, Massachusetts, where other passengers and/or cargo may be laden. On outward and inward flights there is no change of aircraft in the United States and each stopover in this country is for about 1 hour. The aircraft simultaneously engage in the carriage of passengers and cargo in domestic service in the United States. Aircraft so engaged are in foreign trade within the meaning of section 309(a)(1)(C) of the Tariff Act of 1930, as amended, and as such qualify for duty-free withdrawals of turbine fuel and other supplies under that statute. Bureau letter dated April 14, 1966."

In our opinion, American-flag commercial aircraft engaged in continuous regularly scheduled flights between the United States and a foreign country, in both directions, are entitled to duty-free withdrawal of bonded

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fuel for the entire flight if outbound flights only lade passengers and/or cargo for the foreign destination at intermediate airports in the United States and inbound flights only discharge passengers and/or cargo at intermediate airports in the United States.

Our survey disclosed, however, that Treasury Decision 66-99(1) has been interpreted to permit duty-free withdrawal of bonded fuel for flights (1) that lade and discharge passengers and/or cargo at intermediate airports in the United States before completing the international portion of the flight, and (2) that lade and discharge passengers and/or cargo at intermediate airports in the United States after arriving from international points of origin. This interpretation provides that duty-free fuel can be used domestically and would, therefore, appear to be in conflict with the basic objective of section 309 of the Tariff Act.

We noted that in Customs Region IV, Miami, Florida, Eastern Airlines was withdrawing substantial quantities of duty-free fuel at Miami International Airport (MIA) for use on flights with international destinations, but with several intermediate domestic stops where passengers and/or cargo were laden and discharged. For example, Eastern flight number 188 operates daily between Miami and Montreal with four intermediate stops at domestic airports where passengers and/or cargo are laden and discharged. Eastern, in 1 week withdrew about 13,200 gallons of duty-free fuel for this flight at MIA. Based on consumption figures furnished by Eastern there were about 20,800 gallons of fuel consumed in 1 week on the domestic portion of the flight (Miami to New York). Additional duty-free fuel may have been loaded at Baltimore, one of the intermediate stops, where bonded fuel is stored.

Inasmuch as the flight is a domestic flight from Miami to New York, as evidenced by the lading and discharging of passengers and/or cargo at the various intermediate stops, we question whether the bonded fuel used for this portion of the flight should be withdrawn duty free.

During a 1-week period in January 1969, we found that Eastern Airlines loaded about 650,000 gallons of bonded jet fuel at MIA onto aircraft similarly engaged in domestic and international flights, and consumed about 448,000 gallons of this fuel on the domestic portion of these flights. We estimate that, if present conditions persist, about \$224,000 in duty will be avoided each year on the bonded fuel Eastern withdraws duty free at MIA and uses on the domestic portions of these flights.

On February 7, 1969, you rendered an opinion to the District Director of Customs, Washington, D.C., that the domestic portion of a Delta/Pan American interchange flight from Europe to New Orleans with intermediate stops at Dulles and Atlanta is not in foreign trade within the meaning of section 309(a)(1)(C) of the Tariff Act. Delta operated the flight from Dulles to New Orleans and return to Dulles and for this portion of the flight could load and discharge passengers and/or cargo. Eastern and Braniff Airlines, until late January 1969, had an interchange arrangement for a flight from South America to New York with an intermediate stop in Miami. Eastern Airlines operated the flight from Miami to New York and return to Miami and for this portion of the flight could load and discharge passengers and/or cargo.

Region IV officials advised us that the use of duty-free fuel for the domestic portion of the trip was permitted by TD 66-99(1). It appears, however, that this flight is similar to the Delta/Pan American interchange flight mentioned in your February 7, 1969, opinion and therefore, Eastern should not have been permitted to use duty-free fuel on the domestic portion of the flight.

During our survey we noted that the Bureau has not issued any formal guidelines for use by Regional or District officials in determining whether flights qualify for duty-free withdrawals of fuel under section 309. Since the issuance of TD 66-99(1) there has been a significant number of flights qualifying for duty-free withdrawals, including interchange flights. We believe, therefore, that formal guidelines are needed to insure a uniform application of this decision by field officials.


We would appreciate your views and comments as to:

- whether the interpretation of TD 66-99(1) by Customs field personnel conforms to the intent of section 309.
- whether duty should be collected on bonded fuel withdrawn for use on the domestic portions of flights by aircraft simultaneously engaged in domestic and foreign trade.

--the apparent conflict between the Bureau's positions
in TD 66-99(1) and in the February 7, 1969, letter.

--the need for formal guidelines for use by Customs
field officials in administering section 309.

Sincerely yours,



Max A. Neuwirth
Associate Director

The Honorable Lester D. Johnson
Commissioner of Customs
Department of the Treasury